

IMPLEMENTATION OF THE PROVISIONS OF FOREIGN ARBITRAL AWARDS BETWEEN THE THEORY AND PRACTICE

Dr. Nayef Abdiljalil Elhamaideh

Faculty of Law, Al Ain University of Science and Technology

Dr. Mohammed Mouse Awad Alsoelemi

Faculty of Planning and Management, AL- Balqa Applied University

Dr. Murad Mhmoud Yousef Shanikat

Faculty of Planning and Management, AL- Balqa Applied University

Abstract:

Arbitration has become the usual and preferred method for settling disputes, particularly those arising in the context of international trade, as the result of a process of arbitration is the arbitration decision and that decision becomes of no value if it remains just words written are not enforceable in other country that issued them. Was to be the implementation by States of foreign arbitral awards after giving nature the national executive, and within the frameworks and specific conditions stipulated in international agreements concluded in this regard and also organized many of the national legislation.

And the rule of foreign arbitration is a judicial action has the characteristics of the provisions issued by the regular courts in terms of the authoritative thing adjudged for the conflict that divided the person into the refrain with him on one of the parties to resort to other judicial authority after the ruling, arbitration award, it was not necessary to study the formal requirements of the rule foreign arbitration, then the mechanisms for implementing the provisions of foreign arbitral proceedings, whether by the new system and the system of the execution order, and then study the cases of refusal to the implementation of foreign arbitral awards.

Keywords: Implementation, provisions, Foreign Arbitral, theory, practice

Introduction:

The diversity of interests among individuals belonging to different countries and pluralism and openness of States to each other and the developments of life, rapid scientific, economic, technological, social, and given the large volume of international trade relations and the complexity of these relationships and their complexity as well as the growing and varied differences and disputes, whether between individuals or companies and the emergence of problems and new issues including, which led to the emergence of international commercial arbitration and foreign arbitration rulings in foreign countries raised their implementation to extend outside the territory of the State under which the arbitration award.

The basic principle is that any decision or does not implement the rule of a foreign force of law in a State other than that issued it, since it is a manifestation of the state independence and sovereignty. In contrast, we find that the arbitration has become the usual and preferred method for settling disputes, particularly those arising in the context of international trade. As the result of a process of arbitration is the decision of the arbitration and where the decision becomes of no value if it remains just words written are not enforceable in the state is passed, for international trade disputes. Was to be the implementation by States of foreign arbitral awards after giving nature the national executive, and within the frameworks and specific conditions stipulated in international agreements concluded in this regard and also organized many of the national legislation.

We will discuss the issue of implementation of the provisions of Foreign Arbitral Awards in the legal and judicial systems Jordanians, to identify the conditions stipulated by international agreements and national legislation to implement the arbitration award and foreign knowledge as well as cases of refusal to implement the rule of foreign arbitration, by asking some questions are as follows: -

- 1 - What is a foreign arbitration award?
- 2- What are the conditions for issuance of foreign arbitration award?
- 3- What are the mechanisms to be followed for the implementation of foreign arbitral award?

- 4- What are the cases of refusal to execute the foreign arbitral award?

The answer to these questions will be discussed this subject, through the division of the following: -

First topic: The foreign arbitral award executable "concept, Reh, conditions, and authoritative."

Second topic: The formal requirements of the arbitration award.

Third topic: Mechanisms for the implementation of foreign arbitral awards.

Fourth topic: Refusal of the implementation of foreign arbitral awards.

First topic: The foreign arbitral award executable "Concept, Reh."

Which I am dealing with through the following two requirements: -

The first requirement - the concept of the foreign arbitral award executable. Strikingly, when we dealt with the issue of the definition of the rule of foreign arbitration is the lack of a precise definition of it in national laws and international conventions, which means leaving the matter of jurisprudence and the judiciary, and thus has been a lot of trying to find a definition of the arbitration award, which went along with them to define the rule arbitration that: "the work has the characteristics of judicial rulings by courts in terms of the statutory authority of the thing adjudged for the conflict that divided the person into the refrain with him on one of the parties to resort to other judicial arbitration after the verdict".

As defined by another as "a rule that separates the solution to the conflict or in the demand points, or points of conflict and the demands of a chapter shall be final and binding on the parties to the conflict". And reported the second paragraph of Article I of the New York Convention on Recognition and Enforcement of Arbitral Awards of foreign of 1958 definition of the arbitration award, saying: "means the provisions of the arbitrators not only judgments of arbitrators appointed to adjudicate specific cases, but also the judgments of the bodies of the permanent arbitration invoked by the parties" .

I knew Paris Court of Appeal ruling that the arbitration "of the arbitrators in a way that separates the final in all or part of the dispute before them, whether in conflict or in the basis of jurisdiction or in the proceedings, required to put a final end of the case".

The decision of the arbitration foreign as to ensure an externally directed on a national scale fortified, and this is agreed, however, the legislation and jurisprudence disagree in determining that the external component, or other words differed in the officer to distinguish between the foreign arbitral award, national and key controls addressed by the legislation and jurisprudence in this area are: -

- 1 - the nationality of the litigants.
- 2 - Place of residence.
- 3 - Where the decision was issued.
- 4 - Applicable Law.

As for the officers, nationality, place of residence, so the award a foreigner if different nationality of the litigants or different places of residence, and rule out the doctrine of these two officers as they lead to unacceptable results, but that the majority of jurisprudence and

national legislation has excluded these two officers and settled on the officers where the decision of the arbitration and the law application. And a statement of that, the Appeal Court of Jordan esteemed as: "If the government demands to implement it and give it the formula of the Executive is to implement a foreign arbitral award and the decision of the Court of the Southern District of Florida Federal (central), and that the award has acquired a version of the executive by the courts of the country in which it was made, the law applicable is the law enforcement of foreign judgments No. 8 of 1952, as the Court of Appeal had followed the rule of veto and worked under it and decided to implement the decision of the arbitration and the decision of the Court Florida Federal merits formula implementation Vngdo these reasons not included because it is a controversial useless than see his response these reasons, and refer to the terms of the agreement between the parties, we find that states Article 9 Any dispute between the parties to arbitration, so this condition is significant and produces raised, moreover, that there is a foreign rule issued by a competent court Okst arbitrators' formula of implementation ".

Whatever the case may be differences jurisprudence on the standard which defines a foreign arbitration, what concerns us in this area is the standard adopted by the Jordanian legislator, and which is not mentioned in the law of arbitration Jordan No. 31 of 2001 to determine the standard or the officer, who is in which the distinction between foreign arbitral awards and the decisions of national arbitration, leaving it to law enforcement of foreign judgments No. 8 of 1952, where he was in the second article: "The term (foreign rule) contained in this law a sentence of a court outside the Hashemite Kingdom of Jordan (including the religious courts) relating to the rights and procedures requiring the payment of a sum of money or power or liquidation of movable into account include the decision of the arbitrators in the arbitration proceedings if that decision has become the rule of law in force in the country where the arbitration was enforceable as a decision issued by the court in that country. "

Through the previous text shows that the law enforcement of foreign judgments has adopted a standard where the award for the discrimination of foreign arbitral awards on the national, as well as it equated the provisions of the courts and arbitrators' decisions in foreign terms or conditions of implementation and Xsaúha capacity of national, but that does not mean that the provisions of the law on implementation foreign judgments are the only provisions applicable to foreign arbitral awards, but that there are many international conventions is a party which is applicable.

The most important of these agreements in the field of our research is the New York Convention on Recognition and Enforcement of Arbitral Awards foreign for the year 1958, as stated in Article I of the Convention: "1 - apply the present Convention for the recognition and implementation of the provisions of the arbitrators issued in the territory of a State is called upon to recognize and implement these provisions territory and have resulted in disputes between natural persons or moral it would also apply to the provisions of the arbitrators that are not national in the requested State recognition or implementation of these provisions. "

The second requirement: - international arbitration.

There is confusion in the use of the descriptions attached to the arbitration, it is described as internal, as might be described as a foreigner, a foreign arbitral some see as a synonym for international arbitration, while moving other ideas to the lack of direct correlation between the labels, arbitration is may be a foreigner and not internationally, where the decision when a foreign arbitration in accordance with the foreign legal system, while the decision is that international arbitration decision, according to an international treaty or in accordance with the international body for arbitration.

Different standards adopted by the doctrine of the distinction between international arbitration and the arbitration procedure and the varied interpretations in this area some of them take the standard of "the place of arbitration," shall be deemed to arbitration and nationally if it belongs with all its elements to one country, while the internationally if associated with arbitration by external factors, and some of them take the standard "The nationality of the parties" where the arbitration is international if income of a foreign element. Some of them take the standard nature of the conflict or as he calls some of the doctrine of "standard economic." This standard is the nature of the dispute, arbitration is to be international if agreed on the relationship of belonging to a wide international trade relations are not important then the nationality of the parties or the place of arbitration and the standard adopted by the French law, and I consider jurisprudence more standards deal with the reality of international relations.

As for the arbitration law of Jordan did not specify a criterion for the distinction between international arbitration and the arbitration procedure, as it did not address any provisions relating to international arbitration, to be understood from the text of Article 3 thereof, which states: "This Law shall apply to all arbitration agreements are in the Kingdom and the conflict civil or commercial".

Consequently, the researcher believes that the law of arbitration is the Jordanian law on arbitration procedure for the absence of any provision for international arbitration; this was taken legislator standard spatial application of the provisions of law, and wish that the Jordanian legislature adopted a standard recently to differentiate between the National and International Arbitration. Economic as the standard adopted by the French law and for the purposes of the provisions of the Arbitration Act harmony with the provisions of international treaties to which Jordan joined them in this area.

Second topic:

The formal requirements of the rule of foreign arbitration Require the formal requirements of the various laws in many arbitrators' award consequence of the violation, some of invalidity, and the formal requirements we will be in the following demands:

The first requirement: to write the arbitration award.

Was writing the most important conditions required by national laws in the arbitration award, as it is in our view do not think the verdict award verbally by the arbitrators, due to the consequent loss of the rights of the parties to the conflict, and the outbreak of many differences to the implementation of the arbitration award may be presented to forget the before the arbitrator issued by .

It should be noted that the Arbitration Act of Jordan was considered the arbitration agreement is void if it is not written, and in articles (10 / A 49 / A / 1) of the Arbitration Act of Jordan, but for the New York Convention to implement the provisions of Foreign Arbitral did not explicitly provide for the writing requirement, However, this understanding of Article (4 / 1 / A) of the Convention, which stipulates that: "On the request of the recognition and enforcement provided for in the previous article to submit with the application: a The original award official, or a true copy."

The second requirement: the signing of the arbitration award and the majority of its issuance.

The arbitrator signed arbitration award itself, which were not of the arbitral tribunal consists of a group of arbitrators, they sign all of them on the arbitration award, and in case of failure of some of them to sign it suffice to sign most of them to prove the government reasons that led to the failure to sign the minority, and therefore not requirement of unanimity of the verdict to the availability of arbitration, but, the majority.

And provided for in Article (41 / a) of the Arbitration Act of Jordan, but that article (44 / a / 6) of the Arbitration Act of Jordan considered the lack of a majority of the causes of the end of the arbitration proceedings, as saying: "until the arbitration proceedings in any of

the following cases : ... 6 - Non-availability of the required majority for the issuance of the arbitration award. "

And also made the Article 31 / 5 of the Convention on the Oman Commercial Arbitration address the problem of variation and differences of opinion by saying: "In the case of dispersion of opinions the decision shall be the opinion of the President and signed to prove in the resolution dispersion of opinions, but for dissenting views to the point of view of the president, they are recorded and attached with the arbitration award issued, and as stipulated in paragraph 6 of the same article by saying: "the member dissenting opinion in a separate paper and attached with the decision."

Third requirement: to rule out the arbitration.

The specified period for the issuance of the arbitration award of the basic conditions that must be the arbitrator or the arbitral tribunal observed, as exceeding this period leads to depletion of the mandate of the arbitral tribunal to resolve the dispute at hand, which leads to nullification 11, and as stipulated in Article (49 / A / 1) of the Arbitration Act of Jordan, because that right of opponents to re-launch their dispute before the court originally competent to hear the dispute, and as stipulated in Article (37 / a) of the Arbitration Act of Jordan.

In the case of a disagreement over such period is specified or not to authorize the jury selected by the parties to the dispute, the arbitration law of Jordan has identified in Article (37 / a) twelve months from the date of commencement of arbitration proceedings, be renewable for a period of six months from the before the tribunal unless the parties to the dispute otherwise.

Fourth requirement: to cause the arbitration award.

Means of causing the arbitration award the reasons on which the arbitration award, and is intended to cause the provisions of the arbitration in the opportunity to control their actions by the ordinary courts to ensure the validity and legal findings were mainly in the sentencing arbitration, they were different legal systems in the passport causation or not, and these systems legal system of England, which does not require causation provisions of the arbitration 13, unlike the Arbitration Act, the Jordanian who spoke on condition of causation to the arbitration award unless the parties to arbitration agree otherwise, as stated in Article (41 / b) than that "I must be causing the arbitration award unless the parties to the arbitration agree otherwise, or the law applicable to the arbitration proceedings are not required to cite reasons."

As for the position of international agreements of causing the arbitration award has varied is the other, we find that the agreement of Oman Commercial Arbitration provides that it must be causation in article (32 / 1), of which, in contrast to both the New York Convention to implement the provisions of Foreign Arbitral Awards and the Riyadh Convention on Judicial Cooperation, and which did not have included any explicit provisions on the cause of the arbitral award.

The Court of Cassation of Jordan has ruled in this regard that: "The words of the Court of Appeal that are not able to consider the validity of the reasons on which the decision of the arbitrators, without access to the record, the lesson is the reasons set out in the decision of the arbitrators, is it the right reasons? and the defendant challenging the health or the health of these reasons not to submit evidence ".

Third topic:

Mechanisms for the implementation of foreign arbitral awards .

As foreign arbitration belongs to foreign countries and by the special tribunal is to arbitrators sitting outside and govern in the absence of national justice, the practice of States not to allow the implementation of the arbitration award foreign direct within their territories, but not essential for the possibility of such an implementation of the student implementation recourse to national jurisdictions to implement the ruling in his favor, so the diversity of mechanisms for the implementation of foreign judgments, in many cases requires the implementation of the arbitration award as direct intervention of the national judiciary in the State of enforcement for the implementation of the arbitration award to the possibility of developing this provision into effect, whether through a system of new action or through a system the execution order is the most common implementation of a system is in place in most countries of the world, including Jordan.

We will, through this topic in detail these two systems of systems, implementation of foreign judgments by the division of this topic to two consecutive two requirements:

The first requirement: a new action.

The new system, the lawsuit - which takes its states that follow the English system - stems from the idea of the effect of the arbitration award was issued for him to raise a new lawsuit against the national judiciary in the State of enforcement required to implement the ruling of the arbitration award in his favor. Who shall judge the national re-examine a case tribunal and raise all the substantive issues in the presence of the parties to the dispute arbitration, and the reason for that is that the system suit the new look to the rule of foreign arbitration as evidence is not conclusive as prescribed by the issues of fact and law,

governance is an arbitration award is evidence of at least prove the contrary, so that the defendant may challenge the validity of this rule error in the application of the law, and then to the national judge to consider the subject of a new conflict to ensure the health of foreign rule. However, in a later period he developed judicial system Astobjh pressure of international business transactions, so that settled this system on the grounds of the arbitral award foreign conclusive evidence in the new action, a guide does not accept evidence to the contrary, it may challenge the validity of arbitration award in terms of the law and facts, the judge become binding on the national introduction of this guide as soon as certain conditions are met, and without formal examination of the subject of governance .

The second requirement: the system execution order

System is a mechanism used to implement it in the implementation of the provisions of Foreign Arbitral Awards of the most important mechanisms for the implementation of the provisions and the most common and widespread compared to the new system case, so it is a judicial method in place to implement the provisions of foreign arbitral awards by the national judge .

The system is the execution order, as already mentioned above systems, the most common and easier to implement the provisions of Foreign Arbitral Awards, where it is based on the idea that the national judge in monitoring the implementation of the arbitration award for its implementation by ensuring the availability of a set of formal requirements in this provision concerns, most of the health measures that led to the adoption of this provision, and ensure the suitability of arbitration award to the rules of public order in the State of execution, so the national judge will reject the arbitration award in case he did not meet the formal requirements required by national law to implement this provision, which provided for the majority of the laws of countries in the world , in the case of the availability of these conditions, the judge gives the command to the implementation of the national arbitration award as foreign and its appendix of the Executive .

It is clear to us that the system of the execution order is different in concept from a new action, as it does not require that the student implementation submitted a case to national courts for the right to enforce the sentence, but the student of implementation in the system of the execution order by resorting to the courts to obtain an order the implementation of the arbitration ruling in his favor.

The gold side of Jurisprudence (2) to attempt to define the system, the execution order, which he defined as: "Action to be issued by the competent judge in law and order in which the enjoyment of arbitrators' award and a national or a foreign executive force, and

thus it represents the meeting point between the elimination of private and public," Whatever the definition, which has made this system but it lost from the face the eyes of many the essence of judicial control over the work of the arbitrators.

In this regard, Dr. Ezzat Beheiri goes on to say that: "System implementation is not evidence of the validity of the arbitration award for immediate implementation, but rather a condition for the formula of the Executive which in turn are evidence of the validity of the arbitration provision for immediate implementation" .

Has adopted most of the Arab laws system execution order, as the article (54 / a) of the Arbitration Act of Jordan has given to the competent court authority to order the implementation of the arbitration ruling National after its Ptdeghigah, and may refuse to give the execution order as in the case of violating the rule of public order, for example, or had not been notified of the convicted notification is true. As can be understood this system was adopted from the text of Article III of the Code of Execution of foreign judgments in Jordan.

As for the international conventions, the New York Convention has stipulated in Article (3) of which system to adopt the execution order, the same meaning in the text of Article (32) of the Riyadh Convention and Article (35) from Amman Arab Convention on Commercial Arbitration.

According to Articles III and IV of the Law on the implementation of foreign judgments, it is necessary to be carried the foreign arbitral award filed so before the competent Court of First intended implementation whose jurisdiction, the applicant must implement to submit to the competent court a certified copy of the award and if the decision was issued by a language other than Arabic must be translated and believe.

If a court ruling to the implementation of the foreign arbitral award, it is of national character, and thus treated as a national provisions and implement national implementation circles.

Therefore, the Appeal Court of Jordan esteemed as: ((Under article VI of the Code of Execution of foreign judgments No. 8 of 1952 on the sentenced him to provide a certified copy of the verdict to be implemented with a certified copy of the translation if the sentence without the Arabic language and other image to be communicated to the convicted , and therefore make him unique to the image of a final rule AIDS queried in the article referred to before deciding the case adequately provided for in the said Article shall not be considered a presentation of new evidence).

And governance of the implementation of the foreign arbitral award is a court ruling and a national subject in its implementation of the Code of Civil Procedure are set out by the

methods of appeal are the provisions of the appeal and discrimination and intercept of others and re-trial, and as a result, ways to challenge governance judge the implementation of the foreign arbitral award to be more severe than the remedies scheduled for the same rule for decisions of national arbitration, and that strict control that apply to foreign arbitral awards and imposed by national laws have led to the emergence of international treaties on the recognition and enforcement of foreign arbitral awards decisions are more flexible than those imposed by national laws.

The fourth topic:

Cases of refusal to implement the decisions of foreign arbitration. Differentiate some of the jurisprudence of the cases of refusal to implementation and implementation requirements, in the case refused to implement the basic principle of the award into force may, however, refused to implement that resolution if there is certain conditions, but for the term implementation conditions, it means that the original in the decision not to force only if the specific conditions is implemented decision Then, have adopted the term of the Jordanian legislator refused to implementation.

Has identified the seventh article of the Law on the implementation of foreign judgments in cases of rejection of implementation, which stated: "A - a court may refuse the application submitted to it for implementation of foreign rule in the following circumstances:

1 - If you were not the sentencing court of the said function.

2 - If the convicted person has not taken within its power to spend covered by the sentencing court or not resident within its courts, did not attend his choice before the court did not recognize their validity.

3 - If the convict did not come with a note of the sentencing court, did not attend to them despite being the home to spend covered within the power of the court or was a business deal in it.

4 - If the government had obtained it fraudulently.

5 - If the convicted person has convinced the court that the sentence is not acquired after the final.

6 - If the government does not hear a case because the courts of the Hashemite Kingdom of Jordan for violating public order or public morals.

B - The Court may also refuse to call it submitted a request to execute the rule issued by a court of any State law does not permit the implementation of judgments of the courts of the Hashemite Kingdom of Jordan." An analysis of the causes and classification found belong to a group of communities, we will be in the following demands: -

The first requirement: the reasons for the arbitrator or arbitration decision exporter.

Which requires that the decision has been issued by the arbitrator or arbitral tribunal competent to hear the dispute, the were not competent, it is permissible to refuse to implement the foreign arbitral award on the basis of paragraphs (a, b) of the previous article, "Article VII of the Code of Execution of foreign judgments," but that the law implementation of foreign judgments did not show any law subject matter jurisdiction. Since the will was a law governing the issues of arbitration, it is appropriate to subject the matter to the law of the will of any law which the parties agree to arbitration subject to him. In the absence of agreement the matter can be subjected to the law of the State where the arbitration was so similar to the position of the New York Convention on this issue.

The provisions in favor of it, to the ruling of the Court of Cassation of Jordan esteemed as "required to implement the arbitration award subject of this case demonstrate that the applicant company Almiyaz against starting before the talk in terms of other implementing the arbitral tribunal which rendered with a mandate to rule on the dispute based on the Convention Arbitration concluded between the parties to the proceedings of the arbitral tribunal's delegate to the Vienna Stock Exchange of goods in the right of the judiciary in the conflict between the two parties mentioned ".

The second requirement: the reasons for the rights of defense and provide the data.

One of the year, lagged behind, that leads to failure of one of the elements of a fair trial to the prejudice of the award and lead to the annulment, so keen Jordanian legislators on the need to Report the parties to the conflict notes come in a sound and a guarantee to give them the opportunity to submit their arguments and evidence came that conditions in paragraph (c) of Article VII of the Code of Execution of foreign judgments.

In this regard, the Appeal Court of Jordan esteemed as "a given article (7 / 1 / c) of the Code of Execution of foreign judgments No. 8 of 1952 the court of first authority to reject a request submitted to it for the implementation of foreign rule issued outside the Kingdom if the convicted person may reach a memorandum attendance of the court which issued and the purpose of reporting is to ensure the right of defense ".

It also determined "by reference to the text of Article 7 / c of the Law on the implementation of foreign judgments No. 8 of 1952 we find that it authorized the court the power to refuse the implementation of foreign rule, if not a sentenced memorandum of attendance of the sentencing court, did not attend to them in spite of being a resident within the Report not making them up because the lawsuit was a breach of the parties of the proceedings ... ".

Third requirement: the causes of defects cause the decision.

These reasons can be summarized as follows: - not becoming final.

Due to the requirement of the legislature that the decision of foreign enforceable as a decision issued by a court in the country at which the arbitration, the failure of definitive ruling by the prejudice to the viability of implementation and thus loses one of elements of recognition and enforcement, and has also provided for this case, article (7 / 1 / e) implementation of the law of foreign judgments, and considered cases of refusal to implementation. As for the burden of proving this case it is the responsibility of the convicted person.

It says in one of the decisions of the Court of Cassation of Jordan esteemed: "advantage of Article 7 of the Law on Execution of foreign judgments No. 8 of 1952 they dropped the burden of proof that the ruling to be implemented has not acquired after the image of the Executive the responsibility of the sentenced person, and as the privileged did not provide any evidence to prove that the provision did not acquire a final, so it acquired as a final rule is located in a place ".

It also determined: (Paragraph (e) of Article VII of the implementation of the provisions of foreign law No. (8) of 1952 has thrown the burden of proving that the government has not acquired after a final sentence upon him).

Second, the award fraudulent.

As Article 7 / d of the Law on the implementation of foreign judgments allowed to refuse to implement the arbitration award in the event of a foreign student on the implementation of this provision the path of fraudulent, and the burden of proving fraud on the plaintiff (1).

Third, the decision of the arbitration proceedings in the courts do not hear in Jordan for violating the public order and public morals.

This is the reason traditionally supplied most of the legislation, and because of the lack of a precise definition of the issues that are of public order or public morals have left the assessment of the availability of this case of implementation of the Court rejected the request submitted by the implementation.

Fourth: The inability of the dispute to arbitration.

Although the text of Article (7 / 1 / f) of the Code of Execution of foreign judgments as: "may be refused enforcement of the award if the case does not hear the courts of Jordan," but that the judiciary did not consider this case as a separate case from the cases of implementation, but they refused to enter within the framework of public order.

Pursuant to this, the Appeal Court of Jordan esteemed in the governance of a conversation that: ((The terms which have earned a final argument, including detailing, in accordance with the provisions of Article 41 of the Evidence Act, and courts of first instance the right clothing foreign rule formula of implementation and the right estimate whether the conditions Siding referred to in articles (6.7), from law enforcement of foreign judgments No. 8 of 52 available or not, and that meant that it becomes the right to estimate what is considered within the scope of public order or public administration and what is not, and whether the court exporter governance with the power or not, and where governance is required Xah formula of implementation may ensure its rationale and procedures of the trial and where the deals were represented by a lawyer's claim that the sentence was obtained as a result of fraud contrary to reality and remains a mere claim lacks legal guide, and where governance is required Xadsh formula implementation has been issued by a competent court in the United States of America and earned a final and includes a judge summoned against special fee lawyers and expenses under the laws of the United States, nor shall it violates the laws of Jordan, so the decision of the Court of Appeal agreed and the rule of law).

Fourth requirement: The breach of the principle of reciprocity.

If there is a law in the State to which prevents the application of the arbitration awards of Jordan may exclude the application of the foreign arbitral award based on the principle of reciprocity, and opposed the doctrine of the principle of reciprocity for the awards for the following reasons: -

A - it is based on purely political considerations, without taking into account the needs of individuals to trade their transactions.

B - that this principle imposes on the judge's research in the legislation of different countries to see its position on the implementation of the national provisions of the State of the judge, leading to delays in the implementation of arbitral awards in addition to this difficulty and hardship endured by the judge.

Since Jordan is a party to the Convention on New York to implement the provisions of Foreign Arbitral Awards, they will not be able to implement this principle in the face of the rule of foreign award issued under the New York Convention, and because this agreement does not allow the realization of this principle only if the State Organization it has stated its Enforcement when they enter a party in the New York Convention, and this was confirmed by Article (1 / 3) of the New York Convention to implement the provisions of Foreign Arbitral Awards, saying: "each State upon signature, ratification or accession or notification of extension applied pursuant to the provisions of Article X to state on the basis of reciprocity

as limited application of the Convention on the recognition and implementation of the provisions of the arbitrators issued on the territory of another Contracting State".

This is supported by the Court of Cassation of Jordan esteemed by saying: "I have not given in the text of Article II of the Law on the implementation of foreign judgments No. 8 / 1952 any limitation or description of the foreign rule specified, all foreign judgments enforceable in the Kingdom, if they meet the other conditions prescribed by law , without depending on the implementation of an agreement between Jordan and the provisions of the country which issued the rule to be implemented ". It also determined that "Article 7 / 2 of the Law on the implementation of foreign judgments do not mean on the court and in any case to refuse to implement the call made the request to execute the sentence imposed by a court in any country just because the law of that country does not permit the implementation of the provisions issued by the Jordanian courts, but This left the discretion of the trial court Ttrechs option to use the discretion vested in them on the appropriate text depending on the circumstances and the circumstances of each case has to be held for the implementation of foreign rule ".

Since Jordan did not make a reservation on the realization of the principle of reciprocity, it means you can not protest Jordan this principle even in the face of Foreign Arbitral Awards belonging to a State not party to the Convention.

At that ruled the Court of Cassation of Jordan esteemed as: "as the Hashemite Kingdom of Jordan has joined the New York Convention in 1958, and it did not make any reservation on the issue of reciprocity in the implementation of the provisions of International Arbitral Awards, so there is no also to say, application of the law enforcement of foreign judgments and return for the interpretation of Article VII of it, because the International Convention is the highest ranking of the domestic law and the first application ".

Conclusion: -

Notes from this research that the Jordanian Arbitration Law does not contain any provision concerning the question of recognition or implementation of foreign arbitral awards, although the importance of this, resulting in multi-legal systems that apply on the recognition or execution of foreign arbitral awards. Has applied to the foreign arbitral award to be conducted at the law enforcement of foreign judgments or the New York Convention or the Riyadh Convention or other international agreements concluded by Jordan in this regard, adding that the law of the implementation of the provisions of foreign law is not kept pace with the provisions of international treaties concluded by Jordan in this field. It is taken to the Arbitration Act's new that overlooked the extremism of the provisions of

Foreign Arbitral Awards, and determine when is the award a foreigner, also omitted the text of the provisions governing the recognition and implementation of the provisions of Foreign Arbitral Awards, and the omission that led to a multiplicity of legal systems which apply to the recognition or implement the decision of foreign arbitration so I hope the legislature if the Holy alerted to this issue.

Finally, when you enumerate cases of nullity cited the legislature two cases of invalidity in Section VI of paragraph a of Article 49 and these two cases represent the case of one and two exceeded the arbitrator to the arbitration agreement and the state of separation of the arbitrator in matters not covered by the arbitration agreement and noted that the latter falls within the first.

As for the arbitration law of Jordan did not specify a criterion for the distinction between international arbitration and the arbitration procedure, as it did not address any provisions relating to international arbitration, to be understood from the text of Article 3 thereof, which states: "This Law shall apply to all arbitration agreements are in the Kingdom and the conflict civil or commercial."

Consequently, the researcher believes that the law of arbitration is the Jordanian law on arbitration procedure for the absence of any provision for international arbitration, this was taken legislator standard spatial application of the provisions of law, and wish that the Jordanian legislature adopted a standard recently to differentiate between the National and International Arbitration. Economic as the standard adopted by the French law and for the purposes of the provisions of the Arbitration Act harmony with the provisions of international treaties to which Jordan joined them in this area.

References:

- Dr. Mahmoud Al-Kilani, difficulties in the system of commercial arbitration, banks journal, fifth edition, jordan2000, p 45.
- Dr. Abdul-Hamid Al-ahdab, Encyclopedia of International Commercial Arbitration, Part II, Knowledge House, Alexandria, 1998, p 300.
- Jamal Omran Ogneah, the implementation of arbitral awards in foreign trade, "Comparative Study", Master Thesis, University of Jordan, 2004, p25
- Dr. Mohsin Shafiq, Lectures on International Commercial Arbitration, Cairo, Dar Al-Arab renaissance, 1997, p300

Dr. Mohsin Shafiq, Lectures on International Commercial Arbitration, Cairo, Dar Al-Arab renaissance, 1997,p300

Discrimination Rights number 4211/2004, dated 15/5/2005,fifth council, justice center publications.

Methgal Awni Obedat, Implementation of the provisions of Foreign Arbitral Awards, Master thesis,Amman:Jordan University,1999,pp22-23

Dr. Ahmed Hendi, the implementation of the provisions of the arbitrators, "it came to implementing the provisions of national and foreign arbitrators," Alexandria: University's new publication, Alexandria, 2001.p79.

Ibid, p80

Jamal Omran Ogneah, the implementation of arbitral awards in foreign trade, "Comparative Study", Master Thesis, University of Jordan, 2004,pp54-55

Jamal Omran Ogneah, the implementation of arbitral awards in foreign trade, "Comparative Study", Master Thesis, University of Jordan, 2004,pp55-56

Dr. Abdul-Hamid Al-ahdab, Encyclopedia of International Commercial Arbitration, Part II, Knowledge House, Alexandria, 1998.p 311.

Methgal Awni Obedat, Implementation of the provisions of Foreign Arbitral Awards,Master thesis,Amman:Jordan University,1999,p54

Dr. Abdul-Hamid Al-ahdab, p315

Dr. Fawzi Mohammad Sami, international commercial arbitration "comparative study", fifth edition, House of Culture, Amman, 1997.p337

Discrimination Rights number72/1971jordanian bar journal,part1-2,1972,p927

Methgal Awni Obedat,p47

Jamal Omran Ogneah,p108

Methgal Awni Obedat,p49

Jamal Omran Ogneah,p110

Dr. Amro Issa, the new arbitration in Arab countries, modern university office, Alexandria, 2003,p96also in Dr Ezzat al-Beheiri, , Implementation of the provisions of Foreign Arbitral Awards, comparative studies,Dar Al-Arab renaissance,Egypt,1997,p129

Dr Ezzat al-Beheiri,p126

See sixth article of the implementation of the Jordanian foreign arbitral.

Discrimination Rights number 309/2006, dated 1523/11/2006,fifth council, justice center publications.

Methgal Awni Obedat,p91

Methgal Awni Obedat,p91

Fawzi Sámi, International Commercial Implementation, comparative studies, fifth edition, culture renaissance,Amman,1997p323

Discrimination Rights number 874/1986,jordanian bar journal, number11,1989,p2550

Jamal Omran Ogneah,p208

Discrimination Rights number 2959/2005,dated 28/12/2006, fifth council, justice center publications.

Discrimination Rights number 302/1990,jordanian bar journal, number9,1991,p1848

Jamal Omran Ogneah,p210

Discrimination Rights number 2233/2004, dated 20/2/2006,fifth council, justice center publications.

Discrimination Rights number 294/1974,jordanian bar journal,1976,p475

Methgal Awni Obedat,p147

Dr. Fawzi Mohammad Sami,p325

Jamal Omran Ogneah,p207

Discrimination Rights number 1133/2007, dated 16/10/2007, fifth council, justice center publications.

Jamal Omran Ogneah,pp213-214

Discrimination Rights number 3048/2001, dated 21/1/2002, fifth council, justice center publications.

Discrimination Rights number 2549/1999, dated 30/3/2000, fifth council, justice center publications.

Jamal Omran Ogneah,p214

Discrimination Rights number 768/1991, Jordanian bar journal, number7-9, 1992, p1236.